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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

SHAMELLE R. MORRIS, Plaintiff, vs. HOMECOMINGS FINANCIAL, LLC; WACHOVIA DEALER SERVICES, Defendants.	Case No. 07 CV 2122 L (NLS) [Honorable M. James Lorenz] **DEFENDANT HOMECOMINGS FINANCIAL, LLC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS COMPLAINT OR ALTERNATIVELY, REQUEST FOR A MORE DEFINITE STATEMENT** [FRCP RULES 12(b)(6), 12(e)] DATE: January 28, 2008 TIME: 10:30 a.m. PLACE: Courtroom 14

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I. INTRODUCTION

A plaintiff does not have to plead many facts to state a claim in a United States District Court. However, those facts must be intelligible enough to give notice of a claim and must also state a valid claim. Plaintiff Shamelle Morris ("Plaintiff") has filed a complaint that is unintelligible and uncertain as to what claims she is bringing and what relief she seeks. Defendant Homecomings Financial, LLC ("Homecomings") is unable to respond to the complaint. The complaint follows no standard form and contains averments that seem to be declarations. It also has sections that request judicial notice and purport to be a verification but Plaintiff has not properly done these things. It contains mistakes that make it incomprehensible and many sentences are incomplete. It is not at all clear what claims Plaintiff alleges. To the extent that Plaintiff does allege any claims, it appears that they might involve a quiet title action, the Truth In Lending Act ("TILA"), some type of conspiracy, the Racketeer Influenced and Corrupt Organizations Act ("RICO"), a rescission/breach of a contract and fraud. However, it is not at all clear. Plaintiff's complaint should be dismissed, or at least, she should be ordered to provide a more definite statement.

II. ALLEGATIONS SET FORTH IN THE COMPLAINT

It is difficult to briefly recite Plaintiff's allegations to the Court.[1] It appears she alleges jurisdiction based upon an issue of federal law. (Complaint p. 2:5-26.) Plaintiff allegedly executed a loan agreement with Homecomings. (Complaint p. 3:6-9.) Homecomings allegedly failed to give full disclosure of the contract under TILA. (Complaint p. 3:15-17.) Plaintiff allegedly exercised her rights under the guidelines of the United Nations Convention. (Complaint p. 4:17-22.) Plaintiff alleges facts about a "domestic mixed war." (Complaint p. 5:4-19.) The president

[1] Plaintiff has not numbered the paragraphs in her complaint. Homecomings will cite to page and line numbers.

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and vice president of Homecomings allegedly acted in their private capacity and are accused of crimes against humanity. (Complaint p. 5:20-26.) Someone allegedly permitted fraud and acted in bad faith. (Complaint p. 6:1-6.) Multiple officials and agents allegedly continue to raise revenue by fraud and extortion. (Complaint p. 6:9-16.) Plaintiff alleges treason as set forth in the Constitution and requires action by a government officer for malfeasance of office. (Complaint p. 6:18-28.) The alleged RICO violation stems from hidden crimes forced on the public through the bankruptcy of the United States and the Federal Reserve Act. (Complaint p. 7:5-p. 8:11.) A RICO claim allegedly involves the possession or utterance of a counterfeited security which includes anything that is due and owing. (Complaint p. 8:13-25.) Plaintiff alleges she has not waived any contractual rights nor has her conduct constituted a waiver. (Complaint p. 9:1-20.) The president and vice president of Homecomings allegedly refused to give full disclosure under TILA. (Complaint p. 11:1-4.) Plaintiff seeks a determination whether Homecomings has the right to enforce an acceleration clause when the 3 year right of rescission was dishonored. (Complaint p. 11:14-18.) Homecomings allegedly never gave full disclosure nor loaned anything of substance to Plaintiff. (Complaint p. 11:18-23.) Homecomings allegedly failed to disclose that the original loan was a check book entry which could be sold in the open market with no consideration to Plaintiff. (Complaint p. 12:15-20.) Plaintiff allegedly gives judicial notice that relief on her claim can be granted only through TILA and *Yamamoto v. Bank of New York*, 329 F.3d 1167. (Complaint p. 13:4-10.) Plaintiff allegedly anticipates Homecomings will dishonor a notice of rescission through non-judicial foreclosure. (Complaint p. 13:16-22.)

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III. PLAINTIFF'S COMPLAINT SHOULD BE DISMISSED BECAUSE SHE HAS NOT ALLEGED ANY CLAIMS, MUCH LESS ANY VALID CLAIMS

Plaintiff's complaint is so uncertain that it does not contain any claims whatsoever. To the extent that Plaintiff has alleged any claims, she has failed to allege sufficient facts to maintain them.

A. Plaintiff Has Failed to Allege Facts Stating Any Claims for Relief

Plaintiff does not identify in an obvious manner any specific claims for relief. Instead, she alleges a hodge-podge of facts and statutes, apparently hoping that she has a claim under one of them. To the extent that Plaintiff alleges any cognizable claims, she has failed to alleged facts to support them. Plaintiff may be requesting relief under claims for: 1) Quiet Title; 2) TILA, 15 U.S.C. §1601 *et seq.;* 3) Domestic Mixed War; 4) Conspiracy; 5) Treason; 6) RICO, 18 U.S.C. §1961 *et seq*.; 7) Rescission/Breach of Contract; and 8) Fraud, but it is not clear.

1. Legal Standard for a Motion to Dismiss

A motion to dismiss pursuant to FEDERAL RULE OF CIVIL PROCEDURE ("FRCP"), RULE 12(b)(6) tests the sufficiency of the complaint. *Ileto v. Glock Inc*., 349 F.3d 1191, 1199-1200 (9th Cir. 2003). The standard of reviewing the sufficiency of a complaint under FRCP RULE 12(b)(6) is broad but a complaint must allege enough facts to state a claim that is plausible, not merely conceivable. *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1974 (2007). Moreover, "the court is not required to accept legal conclusions cast in the form of factual allegations if those allegations cannot reasonably be drawn from the facts alleged." *Clegg v. The Clerk's Awareness Network,* 18 F.3d 752, 754-755 (9th Cir. 1994); *Cholla Readimix, Inc. v. Civish,* 382 F.3d 969, 973 (9th Cir. 2004); *see also Twombly*, 127 S.Ct. at 1964-65. Plaintiff fails to meet this standard.

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2. Plaintiff Has Failed to Allege Facts Supporting a Quiet Title Claim

Under California CODE OF CIVIL PROCEDURE §761.020, a complaint alleging a quiet title claim must meet certain elements. The complaint must be verified and allege: 1) the legal description and street address of real property; 2) the title Plaintiff seeks and the factual basis for the title (e.g., adverse possession); 3) the adverse claims against the title; 4) the date as of which the determination is sought; and 5) a prayer for the determination of the title. *See also Strauss v. Summerhays*, 157 Cal.App.3d 806, 812, fn.3, 204 Cal.Rptr. 227 (1984). Plaintiff has failed to meet these threshold elements.

Plaintiff's "verification," while containing extraneous information, seems to fulfill the requirements of CODE OF CIVIL PROCEDURE §446. However, she fails to state the legal description of the property seemingly at issue (and it is not clear that the property is at issue). (Complaint p. 1:19-21.) She also fails to describe her title or interest in the property and the basis for any interest. In fact, she fails to allege she even owns the property mentioned in her complaint, although she seems to reside there. Failure to allege an interest is fatal to a quiet title action. *Melvin v. Melvin*, 8 Cal.App. 684, 688, 97 P. 696 (1908); *see also South Shore Land Co. v. Petersen*, 226 Cal.App.2d 725, 740-741, 38 Cal.Rptr. 392 (1964). She does not allege what adverse claims against the title Homecomings allegedly has. She also does not specifically pray for title to transfer from Homecomings to her. She merely prays for a reconveyance, but to whom and of what interest, she fails to specify. Plaintiff simply has not alleged the elements of a quiet title claim since she has not alleged she even has a claim to any real property or that Homecomings holds an interest adverse to hers.

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3. Plaintiff Has Failed to Allege Facts Supporting a TILA Claim

Under 15 U.S.C. §1635, the section of TILA Plaintiff cites, Plaintiff has the right to rescind her loan disbursement within 3 days of consummating the loan. The lender must provide notice of this right to Plaintiff. Plaintiff must notify the lender, by mail, that she is rescinding the loan within 3 days of either delivery of the notice of the right to rescind **or** the consummation of the loan. 12 C.F.R. §226.23(a)(2) (Regulation Z). Under 12 C.F.R. §226.23(a)(3), if Plaintiff did not receive a written notice of the right to rescind, her right to rescind expires 3 years after consummating the loan.

Plaintiff's TILA claim would seem to fail for a fundamental reason—she alleges that Homecomings never "loaned anything of substance" to her. (Complaint p.11:20-21.) Even if this averment was a mistake, she simply has not alleged that she provided written notice of her rescission to Homecomings. She also has not alleged that she failed to receive a written notice of her right to rescind; she merely alleges she did not receive full disclosure of the contract. It is not clear to which contract she is referring or what was not disclosed. Finally, she fails to allege that she can tender the amount of the loan to Homecomings. Plaintiff's ability to tender the loan amount is an essential element of maintaining a TILA rescission claim. *Yamamoto v. Bank of New York*, 329 F.3d 1167, 1173 (9th Cir. 2003) (District Court can dismiss TILA rescission case if borrowers cannot provide proof of their ability to repay loan proceeds). Homecomings cannot discern any basis for Plaintiff's supposed TILA claim.

4. Plaintiff's Domestic Mixed War Claim Is Not a Valid Claim

Plaintiff seems to allege a claim for a "domestic mixed war." She cites 18 U.S.C. §4 in support of this "claim", but that statute involves the crime of misprision of felony. Misprision of felony is a criminal claim that can only be prosecuted by the United States Attorney General. *See, e.g., U.S. v. Nixon*, 418 U.S. 683, 694, 94

S.Ct. 3090 (1974); 28 U.S.C. §516. It has nothing to do with a war, nor is it a claim she can allege against Homecomings.

Plaintiff also cites 42 U.S.C. §§1983, 1985 and 1986 to support this claim. However, it is not at all clear how a deprivation of a person's constitutional rights under color of law states a claim for a "domestic mixed war." The protections provided by 42 U.S.C. §§1983, 1985 and 1986 simply do not support this "claim." Even assuming that Plaintiff meant to allege some type of constitutional claim for which she seeks restitution under 42 U.S.C. §§1983, 1985 and 1986, she has failed to do so.

Specifically, Plaintiff has not stated a 42 U.S.C. §1983 claim. She has not alleged that Homecomings acted under color of law or deprived **her** of a **constitutional** right. In fact, a §1983 claim cannot be brought against a private entity, except when Plaintiff has alleged the entity is a "willful participant in joint action with the State or its agents." [Internal quotations omitted.] *Peng v. Mei Chin Penghu*, 335 F.3d 970, 980 (9th Cir. 2003). She has not done so. She only alleges that Homecomings is accused of constitutional violations and crimes against humanity and provides no details about these "crimes." (Complaint p. 5:20-26, p. 10:18-21.)

If Plaintiff is bringing a claim under 42 U.S.C. §1985, it too is not a valid claim against Homecomings. Such a claim requires allegations meeting the following elements: (1) A conspiracy; (2) The conspiracy was motivated by racial or a class-based discriminatory animus for the purpose of depriving, either directly or indirectly, Plaintiff of the equal protection of the laws, or of equal privileges and immunities under the laws; (3) Homecomings committed an act in furtherance of this conspiracy; (4) Plaintiff was either injured in her person or property or deprived of any right or privilege of a citizen of the United States. *Sever v. Alaska Pulp Corp.*, 978 F.2d 1529, 1536 (9th Cir. 1992). Plaintiff has not alleged Homecomings entered into a conspiracy with anyone else and has not alleged that the conspiracy

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was designed to deprive her of her rights because she is a member of a recognized class (e.g., race, color, religion, sex, or national origin). See *Sever*, 978 F.2d at 1536. Finally, it is not clear what injuries Plaintiff suffered. She simply has not alleged any facts setting forth her claim.

If Plaintiff is bringing a 42 U.S.C. §1986 claim, it must fail. A claim can only "'be stated under § 1986 only if the complaint contains a valid claim under § 1985.'" *McCalden v. California Library Ass'n*, 955 F.2d 1214, 1223 (9th Cir. 1990). As discussed above, Plaintiff has failed to allege a valid claim under 42 U.S.C. §1985. Plaintiff therefore has not provided any cognizable basis for her "domestic mixed war" claim.

5. Plaintiff Has Failed to Allege Facts Supporting a Conspiracy Claim

Plaintiff seems to be bringing this claim under state law. The elements of a civil conspiracy are: (1) an agreement to do a wrongful act; (2) a wrongful act or acts done pursuant thereto; and (3) the damage resulting. *Kidron v. Movie Acquisition Corp.*, 40 Cal.App.4th 1571, 1581, 47 Cal.Rptr.2d 752 (1995); *see also Applied Equipment Corp. v. Litton Saudi Arabia Ltd.*, 7 Cal.4th 503, 511, 28 Cal.Rptr.2d 475 (1994). To be liable, Homecomings must participate in committing the tort; mere knowledge is insufficient. *Kidron*, 40 Cal.App.4th at 1582. There also has to be two parties conspiring with each other. *Kidron*, 40 Cal.App.4th at 1582. Plaintiff has failed to allege Homecomings participated in any tort. In addition, Plaintiff has not alleged that Homecomings conspired with another entity. Finally, if Plaintiff has not alleged facts to support any torts, then logically a conspiracy cannot be established. *Kidron*, 40 Cal.App.4th at 1582. She has failed to allege any facts supporting any cognizable claims for which the conspiracy was supposedly formed. This claim should be dismissed.

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6. Plaintiff Has Failed to Allege Facts Supporting a Treason Claim

This criminal claim can only be prosecuted by the United States Attorney General. *See, e.g., Nixon*, 418 U.S. at 694; 28 U.S.C. §516. Even assuming Plaintiff can somehow bring this claim (which she has failed to allege facts showing she can), she has not established the elements. Treason consists of two elements: adherence to the enemy, and rendering it aid and comfort. *Tomoya Kawakita v. U.S.*, 190 F.2d 506, 515 (9th Cir. 1951). Plaintiff has alleged no facts showing Homecomings rendered aid and comfort to an enemy of the United States or that it adhered to an enemy. This claim is not established and should be dismissed.

7. Plaintiff Has Failed to Allege Facts Supporting a RICO Claim

To establish a RICO claim, Plaintiff must allege facts showing: (1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity (5) causing injury to the plaintiff's "business or property." 18 U.S.C. §§1964(c), 1962(c); *Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996). "Racketeering activity" is defined as a violation of one or more of a laundry list of criminal actions which include murder, kidnapping, gambling, arson, robbery, bribery, extortion, dealing in obscene matter, dealing in a controlled substance, or fraud (including wire and mail fraud). 18 U.S.C. §1961. An "enterprise" must consist of two distinct entities. *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 161, 121 S.Ct. 2087 (2001). Plaintiff has failed to allege Homecomings was part of an enterprise, conducted a pattern of racketeering activity or that she suffered any damages due to the activity. She has not alleged she received an illegal loan or that she has lost her property through foreclosure. Indeed, it is unclear that Plaintiff has suffered any damages; while she has alleged a table with money amounts, there are no allegations indicating why she should receive those amounts.

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8. Plaintiff Has Failed to Allege Facts Supporting a Breach/Rescission of Contract Claim

Plaintiff alleges several paragraphs about waiving her rights under an agreement (possibly a settlement agreement, but it is not clear) and requesting rescission of the loan agreement as well as mentioning a third agreement. (Complaint p. 9-12.) Aside from containing conclusions of law that she "shall not be deemed to have waived right [sic] under this agreement," she fails to allege any details about the three agreements she mentions. (Complaint p. 9:2-3.) It is not even certain whether Plaintiff is asserting a breach or requesting rescission. Either way, she has not stated a claim.

a. Plaintiff Has Not Alleged a Breach of Contract Claim

Plaintiff's supposed "breach" claim is not supported by any fact. While FEDERAL RULE OF CIVIL PROCEDURE RULE 8 only requires plaintiff to allege sufficient facts to provide Homecomings notice of a claim, she still must allege information about the contract. As mentioned, she seems to allege the existence of three contracts—a settlement agreement, the loan agreement and an unspecified agreement. Plaintiff has not alleged any terms of any of the contracts, or which, if any, of the contracts were breached. Plaintiff's claim is not supported by facts; Homecomings has no notice of a breach claim because there are no facts stating what contracts or contractual terms are even at issue.

Plaintiff also has not alleged that she fulfilled all the conditions precedent to any contract. Alleging performance of all conditions is necessary to state a claim. *Redfield v. Continental Cas. Corp*., 818 F.2d 596, 610 (7th Cir. 1987) ("An essential allegation of a complaint based upon a breach of contract is that the plaintiff performed all contractual conditions required of him"); *Careau & Co. v. Security Pacific Business Credit, Inc*., 222 Cal.App.3d 1371, 1390, 272 Cal.Rptr. 387, 396 (1990) ("we are forced to conclude that they have failed to state a cause of action for breach of contract. There are no specific allegations of the performance of

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any of the conditions"). Plaintiff cannot have a valid contract claim if she has not alleged facts that she fulfilled all of the terms of the contract.

b. Rescission of Contract Is Not a Valid Claim

Plaintiff also seems to assert a rescission of contract claim. It is not clear what contract she seeks to rescind, but it seems to be her loan agreement. However, such a claim is not valid. Actions seeking to have a rescission adjudged were abolished in 1961. Witkin, Summary of California Procedure, Actions, §124, Legal Action for Restitution (4th ed. 1997). The proper procedure is to unilaterally rescind the contract, return all consideration received from the other party, and seek restitution for the consideration given to the other party. *See Runyan v. Pacific Air Industries*, 2 Cal.3d 304, 311-313, 85 Cal.Rptr. 138 (1970). Plaintiff has failed to state a restitution claim. She has not alleged she has returned the consideration she received from Homecomings nor has she alleged that she is prepared to do so. Thus, she has not alleged a valid restitution/rescission claim.

9. Plaintiff Has Failed to Allege Facts Supporting a Fraud Claim

Finally, Plaintiff also seems to allege a fraud claim. FEDERAL RULE OF CIVIL PROCEDURE, RULE 9(b) requires that "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." This means that Plaintiff must state the contents of alleged misrepresentative statements, as well as what is false or misleading about the statement, who made it, when it was made, where it was made and why it is false. *Yourish v. California Amplifier*, 191 F.3d 983, 993 (9th Cir. 1999) (*citing In re GlenFed Sec. Litig.*, 42 F.3d 1541, 1545 (9th Cir.1994) (en banc)). Plaintiff's fraud allegation is a long, incomplete sentence that seems to be merely a definition of fraud. (Complaint p. 5:28-p.6:6.) Plaintiff has not met the heightened pleading requirements of RULE 9. Under state law, she absolutely has failed to state a claim. *See, e.g., Committee On Children's Television, Inc. v. General Foods Corp.*, 35 Cal.3d 197, 215-216, 197 Cal.Rptr. 783 (1983);

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Murphy v. BDO Seidman, LLP, 113 Cal.App.4th 687, 692, 6 Cal.Rptr.3d 770 (2003); *Tarmann v. State Farm Mutual Auto Ins. Co.*, 2 Cal.App.4th 153, 157, 2 Cal.Rptr.2d 861 (1991); *Lazar v. Superior Court*, 12 Cal.4th 631, 49 Cal.Rptr.2d 377 (1996); *Stanfield v. Starkey*, 220 Cal.App.3d 59, 73, 269 Cal.Rptr. 337 (1990).

Plaintiff also inexplicably cites California Penal Code §532 and 18 U.S.C. §1001 as the bases for this claim. However, she cannot bring a criminal action under those statutes. *See, e.g., Nixon*, 418 U.S. at 694; 28 U.S.C. §516; *People v. Viray*, 134 Cal.App.4th 1186, 1202-1204, 36 Cal.Rptr.3d 693, 707 (2005); CAL. GOVT. CODE §26500; CAL. GOVT. CODE §100. Plaintiff also has sued two different entities, Homecomings and Wachovia Dealer Services, but has not differentiated between them. Plaintiff "must, at a minimum, 'identif[y] the role of [each] defendant[ ] in the alleged fraudulent scheme.'" [Citations omitted in original.] *Swartz v. KPMG LLP*, 476 F.3d 756, 765 (2007).

Even had Plaintiff pled her fraud claim with the required specificity, she has not alleged sufficient facts to state a fraud claim. The elements of a fraud claim are 1) misrepresentation of a fact; 2) knowledge of falsity; 3) intent to defraud, that is, to induce reliance; 4) justifiable reliance; and 5) resulting damage. *Buckland v. Threshold Enterprises, Ltd.*, 155 Cal.App.4th 798, 806-807, 66 Cal.Rptr.3d 543 (2007). Plaintiff has not alleged any misrepresentations of any facts; she merely alleges Homecomings failed to make full disclosures. She does not allege that the disclosures affected her decision to sign any of the three agreements she mentions or that there was in fact anything false about any of the three contracts. She also fails to allege how she was damaged. "It is the rule that fraud without damages is not actionable." *Agnew v. Parks*, 172 Cal.App.2d 756, 768, 343 P.2d 118 (1959); *Stephenson v. Argonaut Ins. Co.*, 125 Cal.App.4th 962, 974, 23 Cal.Rptr.3d 195 (2004). She has not alleged a fraud claim.

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B. A More Definite Statement is Needed Because Homecomings Cannot Answer Plaintiff's Complaint

Not only has Plaintiff failed to allege facts to support her claims, the facts she has alleged are incomprehensible. If Plaintiff's complaint is not dismissed, Homecomings cannot realistically answer her complaint. Many of the allegations are misstated summaries of statutes or misquoted principles. Some of the sentences in the complaint are incomplete or are averments that cannot be denied or admitted. A motion for a more definite statement should be granted if Homecomings cannot frame a responsive pleading. FED. R. CIV. P. 12(e); *Famolare, Inc. v. Edison Bros. Stores, Inc.*, 525 F.Supp. 940, 949 (E.D. Cal. 1981).

Plaintiff seems to allege "claims" that are not legally recognized claims such as "domestic mixed war." She cites several statutes, including 15 U.S.C. §1635, 18 U.S.C. §§513, 1001, 1961 and 2311, 22 U.S.C. §263, 28 U.S.C. §4 and 42 U.S.C. §§1983, 1985 and 1986, 12 C.F.R. §226.23 and UCC §§3-103, 403, 1-105 and 1-201, yet fails to allege any coherent facts relating to those statutes. Plaintiff's claims often only aver the definitions or words of a statute but fail to allege facts meeting those definitions. She alleges violations of criminal statutes yet cannot bring such claims.

Plaintiff's contract claim is uncertain; at times she alleges three different contracts—her loan agreement, a settlement agreement and a third unspecified agreement. She has failed to allege any terms of any agreement, much less a breach or her ability to rescind. Her fraud claim consists of one sentence. It is not even clear upon what jurisdictional grounds Plaintiff is suing since she does not cite the appropriate statutes, although it seems that the court has jurisdiction under 28 U.S.C. §1331. If the complaint is not dismissed, Plaintiff simply must redraft her complaint so that it is understandable.

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IV. CONCLUSION

Plaintiff's complaint is vague and uncertain at best. Plaintiff has not sufficiently identified the claims she is making in her complaint. Her complaint contains many statements about many different statutes and potential bases for claims, but it fails to allege facts fulfilling the elements of those claims. It is impossible for Homecomings to answer the complaint. There are no numbered paragraphs and some of the sentences in the complaint are incomplete or are averments that cannot be denied or admitted. Even if Plaintiff had alleged a complaint that was not vague and indefinite, she has failed to allege facts to satisfy those claims. She has alleged insufficient facts to support her: 1) Quiet Title claim; 2) TILA claim; 3) Domestic Mixed War claim; 4) Conspiracy claim; 5) Treason claim; 6) RICO claim; 7) Rescission/Breach of Contract claim; and 8) Fraud claim, if those are the claims she is making. Plaintiff's complaint should be dismissed.

DATED: December 11, 2007

By /s/ Frederick A. Haist
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Other Authorities

Witkin, Summary of California Procedure, Actions, §124, Legal Action for Restitution (4th ed. 1997) 10

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